

1 to find out what needed to be in the public file.

2 Q But then you would have to go physically
3 someplace else to actually look at the public file to
4 see what was there?

5 A Right. The public file was located out the
6 door and down the hall in the open space, toward the
7 rear of the open space there at the radio station.

8 Q So after you would look at the binder you
9 would then get up and go down the hall and look at the
10 public file, or how did that work?

11 A My memory is I referred to the binder there
12 in my office. It was the other document, the NAB
13 document, that was more limited in scope. It was
14 literally a two or three page document. This document
15 is pretty big. It was a binder about that thick.

16 Q So the document that you're thinking of is
17 not only the document we're looking at, but there was
18 a good deal more? This document I'm showing you, I
19 think there was 82 pages to it, and when you make
20 reference to the binder and that it was fairly
21 sizeable, are we talking about something that has a
22 lot more than 82 pages in it?

23 A I'm not sure if I'm following. This
24 information was located in a green binder. There were
25 other resource materials that I had available. One

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1 was a memo from the NAB that was -- it had a similar
2 listing as what's listed here and it was really easy
3 to read. Actually, it was the one that was with the
4 headline what you need to keep, what you need to toss.

5 MS. REPP: May I interject that this is an
6 excerpt that was produced here from what is a green
7 binder about an inch and a half to two inches wide.

8 MR. SHOOK: I may not have what you're
9 thinking of.

10 MS. REPP: This?

11 THE WITNESS: That looks really familiar.

12 BY MR. SHOOK:

13 Q This has SFUSD-271 through 276. I'm going
14 to shortcut this a little bit. On the top it has
15 typed in here Dated Material, for Historical Purposes
16 Only. If you look through this, there are references
17 that would suggest that this document was not the
18 document that you would have seen if you would have
19 seen if you had looked at something prior to preparing
20 the renewal application, because the timing of this is
21 a little bit after that.

22 A What I remember about this is that the
23 formatting, the headline, again the simple, easy-to-
24 read and scan, the way it's laid out. It looks very
25 familiar to me.

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1 Q So this is a document similar to the one
2 that you had looked at when you were referencing what
3 it was that you were to do with the renewal
4 application, and more particularly, what it was that
5 needed to be in the public file?

6 A Correct.

7 Q For example, with respect to looking at
8 what's marked as SFUSD-272, the second box makes
9 reference to quarterly issues programs lists. Then it
10 talks about the retention period. Apparently, the
11 retention period for this is the term of license, so
12 it would have been eight years. In other words, there
13 could have been, depending on how long the license had
14 been held, an awful lot of reports. Is that something
15 that you remember looking at prior to filling out the
16 renewal application?

17 A I'm not sure if I understood your question.

18 Q Well, one of the things that you mentioned
19 when you were talking about was your understanding of
20 what was supposed to be in the public file relative to
21 issues programs lists, and that understanding, if I
22 remember right, seems to be a little bit different
23 than what this box is talking about. You were talking
24 about, if I remember right, that the issues programs
25 lists that you had to be concerned about were those

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1 for programs that ran during your tenure as general
2 manager. Am I remembering what you said correctly, or
3 did you not?

4 A I thought I was responsible for making sure
5 that the file was complete, meaning that for the
6 programs that covered issues that were of public
7 interest for the time that I was general manager and
8 for the time before I was general manager.

9 Q All the way back to the beginning of the
10 license term?

11 A Correct.

12 Q So you understood that the requirement was
13 for the license term and not just for the period of
14 time when you were general manager?

15 A Correct, but that during the time that I was
16 general manager I undertook activities to make sure
17 that the file was complete for the license term by
18 going to the producers and asking them to put into the
19 public file the lists for the years before.

20 Q You had mentioned John Covell as one
21 producer. Would there have been other producers that
22 you would have approached?

23 A There could have been. I don't remember
24 exactly.

25 Q You remember Covell?

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1 A Yeah, I remember Covell, because he was good
2 to work with. He was on the ball, easy to work with,
3 very cooperative. There were other programs that the
4 station had on the air that also covered issues that
5 were in the public interest, like we had a legal
6 program on where Chuck Finney, an attorney, would go
7 on the air and take telephone calls from listeners.

8 Q I think it was called Your Legal Rights?

9 A Yeah. We had another program called Work
10 with Marty Nemko, a call-in program that we actually
11 started after I got to the station. It was a new
12 program where he took listener calls about workplace
13 issues. I don't have a distinct recollection of
14 working with those producers, to put their lists into
15 the public file.

16 Q So Covell, you remember asking the legal
17 person whose name just slipped by me. His name was
18 again? Chuck Finney?

19 A Chuck Finney.

20 Q You don't remember speaking with him?

21 A No, I don't. I really don't remember.

22 Q And Marty Nemko, you don't remember speaking
23 with him and asking him to prepare lists?

24 A No, I don't remember.

25 Q Other than Covell and Finney and Nemko, were

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1 there other producers that you would have or could
2 have approached and asked them about preparation of
3 public file material?

4 A Yeah. We had a local program, a local
5 produced program that aired in the middle of the day
6 or right after Fresh Air I think. It was called Open
7 Air. That program was hosted by Alan Farley and by
8 Michael Johnson, and they would regularly bring in
9 people to interview. That's one of the programs I
10 remember. I'd have to have a schedule in front of me
11 to look at the other programs.

12 Q Did you ever prepare or have you prepared
13 issues programs lists relative to NPR programming?

14 A I don't remember.

15 Q Now, the next page that I have clipped is
16 SFUSD-273, and the portion that I have clipped refers
17 to annual ownership reports and ownership-related
18 documents. Do you recall reading that and then taking
19 any steps prior to completing the renewal application
20 in terms of putting ownership material in the file?

21 A I know that I attached to the renewal
22 application form an ownership form. I don't think it
23 was a report. It was a form where we listed -- where
24 I listed -- the station's ownership, you know, the
25 school district and then the board members. I think

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1 there was some other information on there related to
2 contracts or relationships that the station has or the
3 school district has with other organizations. That's
4 what I remember relating to that.

5 Q Now, at the bottom of SFUSD-274 and carrying
6 over to the top of SFUSD-275, there is a little
7 paragraph about quarterly issues programs lists.
8 Could you read that to yourself, please, and then tell
9 me whether this was something that you had read prior
10 to completing the renewal application?

11 A I don't remember reading this, though given
12 that I had this document in front of me, I must have
13 read that.

14 Q But you don't remember right now?

15 A Right.

16 Q Going back to what would have been in the
17 big green binder, at page SFUSD-55, the second
18 paragraph on that page refers to problems programs
19 list. If you could read that paragraph to yourself
20 and the two paragraphs that follow. Were these
21 paragraphs that you had read prior to filling out the
22 renewal application?

23 A You know, I don't remember specifically
24 reading this paragraph, but given that I used this as
25 a resource, then I would have read that.

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1 Q Moving to the next page, the SFUSD-56,
2 underneath Period of Retention for Ownership
3 Information, it speaks in terms of how long such
4 material needs to be in the public file. Did you read
5 through that prior to filling out the renewal
6 application?

7 A I don't remember reading through this period
8 of retention section.

9 Q Then this particular section reads Top
10 Priority Items for the File. It begins on SFUSD-57
11 and carries over to page 58. The portion that I have
12 clipped concerns ownership documents. Is this
13 something that you had read prior to filling out the
14 renewal application?

15 A I don't remember reading this section
16 either.

17 Q I'm going to jump back to the declaration
18 that we had been talking about before we broke for
19 lunch. This time I'd like you to read through
20 paragraphs 11 and 12, and then I'll ask some questions
21 about those. Now, with respect to paragraph 11, we've
22 talked at length about how this was the first renewal
23 application that you had to fill out and that all of
24 this process was relatively new to you.

25 The third sentence of paragraph 11 speaks in

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1 terms of, "My understanding of what information was
2 required to be required and certified was not
3 complete, and I believe I may have misunderstood what
4 was required in completing Section 3, Questions 1, 2
5 and 3." Can you step back in time and try to
6 reconstruct for us what it was you think you may have
7 misunderstood, especially with respect to Question 2?

8 A What was Question 2?

9 Q Question 2 was about what was to be in the
10 public file and whether it had been placed there at
11 the appropriate times as required by the rule.

12 A So what was the question?

13 Q If you could step back in time, you make
14 reference there that you may have misunderstood what
15 was required to be there. At the time you signed this
16 declaration, what understanding did you have in terms
17 of what was supposed to be there?

18 A I think in my mind what -- I think
19 conceptually in my mind, my understanding was that the
20 station needed to convey in its public files a sense
21 that it was providing programming as a service that
22 covered issues that were in the public interest. So
23 when I approached the producers and asked them to put
24 into the public file a record of the programs that
25 we've produced that show that we have been producing

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1 programming that covered issues that were of
2 importance to the community we serve, that was the
3 concept that I had in my mind.

4 The other concept was, whoa, this stuff
5 isn't in the file, we need to make it complete. I was
6 working very quickly, too, you know, given that there
7 were other priorities at the station. One, we needed
8 to increase our listenership and increase the portion
9 of our funding that didn't come from the federal
10 government as quickly as possible, because the year
11 that I got to the station the Corporation for Public
12 Broadcasting had just put in place new criteria to
13 continue to receive federal funding.

14 So I was spending a lot of my time making
15 programming changes, figuring out how to raise more
16 money, working the bugs out of the station move, so I
17 was working very quickly at the time and as best as I
18 could, working with the concepts that I understood.
19 So I think that in my mind, that was the understanding
20 that I had.

21 Q You mentioned today that you now realize
22 that the box that you should have checked was the "no"
23 box instead of the "yes" box with respect to Question
24 2. Is it so that that understanding only came after
25 you left KALW's employ?

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1 A Yeah, because I believed that I was right
2 when I filled out the application.

3 Q Now, moving on to paragraph 12, the very
4 first sentence reads, "With respect to the response to
5 your Question III(2), I had conferred with
6 communications counsel regarding what was required to
7 be in the public files and with respect to response to
8 this question." Which communications counsel had you
9 spoken with conferred with?

10 A Our FCC attorney at the time was Ernie
11 Sanchez.

12 Q Is he the person being referred to here?

13 A I don't remember. I don't remember if he's
14 the person I'm referring to there, but he would have
15 been the only counsel that I would have referred to.
16 I don't remember, but it would have -- it could have
17 only been Ernie that I'm referring to in that
18 sentence.

19 Q Well, there was this other person, Susan
20 Jenkins I think her name was. Her name also appeared
21 on pleadings, but I guess she was, what, an associate
22 of his?

23 A Yes, Susan worked in Ernie's office, so when
24 I refer to Ernie Sanchez, I mean the law firm of Ernie
25 Sanchez that --

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1 Q Sort of like the royal "we"?

2 A The law office of Ernie Sanchez, to my
3 understanding, was the station's FCC attorney. The
4 other thing, not having any experience working with
5 attorneys, especially in this respect, again it was an
6 area where I didn't know what I was doing.

7 Q Well, I guess one way of putting it is you
8 would be saying that you didn't even know which
9 questions to ask of the counsel in order to get an
10 answer that would have been useful?

11 A Correct.

12 Q In the process of filling out the renewal
13 application, was this your first contact with the law
14 office of Mr. Sanchez?

15 A I don't remember if this was the first
16 contact, because we were also working on another
17 project that was related to assigning governance of
18 the station to a 501(c)(3), and Ernie was involved.
19 Again, this is something I have to refer back in time.
20 This is something that I think Enrique Palacios had
21 started working on with Ernie to file the papers to
22 incorporate a 501(c)(3), that if the recommendation to
23 transfer oversight and management to a separate entity
24 were to take place, Ernie was the one taking care of
25 -- I think the term is "incorporation papers."

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1 Q This is related to that task force
2 recommendation that has been talked about a little
3 bit?

4 A Correct.

5 Q Conceivably, you had some contact with Mr.
6 Sanchez or his associate in connection with the task
7 force recommendation, and that would have been
8 separate from any contact that you had with him or his
9 associate with respect to the renewal application?

10 A Correct.

11 Q With respect to paragraph 12, that first
12 sentence, do you remember what it was that you had
13 conferred with communications counsel about? It
14 appears there are two aspects here. One is what was
15 actually supposed to be in the public file, and then
16 the second part of it was how to answer the renewal
17 application question. So if we could break that out
18 into two parts, the first being what conferring did
19 you do with respect to what was required to be in the
20 public files?

21 A I can only imagine that my first question to
22 Ernie would have been, so I've received this notice to
23 renew our FCC license, what am I supposed to do. I
24 can remember that I didn't have very many -- I tried
25 to limit the number of conversations I was having with

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1 the attorney, because at the same time, the station
2 had to pay its own bills, and I was trying to raise
3 the funding so that we could continue to receive our
4 federal funds. I was very cost conscious, in knowing
5 that every time I --

6 Q We do that, don't we, every time you pick up
7 the phone.

8 A I was very cognizant of that. Again, I
9 think this is an area where not knowing how heavily I
10 needed to rely on counsel's advice, I tried to do
11 everything on my own.

12 Q So in terms of conferring with
13 communications counsel regarding what was required to
14 be in the public files, do you have any recollection
15 at all as to what information you may have received
16 relative to what was supposed to be in the public
17 files?

18 A I can't remember anything except that prior
19 to submitting the application as completed to the FCC,
20 I did ask Ernie to take a look at it before I sent it.
21 That's really the only distinct memory I have of
22 working with Ernie on the application.

23 Q But this sentence was drafted as it was, I
24 take it, because there had been a conferral of some
25 kind.

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1 A Yeah. I can read that. I just don't
2 remember what it was.

3 Q The next sentence reads, "I relied upon my
4 understanding of the advice of counsel, the counsel
5 memorandum on this subject, published by the National
6 Association of Broadcasters, and my knowledge of the
7 files maintained by KALW in responding 'yes' to this
8 question." Do you recall what advice you received
9 from counsel on that that's being referred to in that
10 sentence?

11 A No, I don't.

12 Q Do you recall having a conversation with
13 anyone around the time the renewal application was
14 prepared what the consequences would have been if a
15 "no" answer would have been provided to the Question 2
16 in Section 3 that we have been talking about?

17 A No, I don't recall that.

18 Q Now, reading on in paragraph 12, "At the
19 time I made that response" -- referring back to the
20 "yes" response -- "I believed that Ms. Hecht's
21 assessment of the public inspection file was
22 inaccurate and confused, and I did not recall any
23 prior conversation I may have had with Mr. Evans on
24 the subject. I also believed that I had fully
25 accounted for all public issues programs during my

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1 tenure as general manager in the document which
2 Petitioner has labeled 'Exhibit O,' which is what I
3 believed was called for by the question and the rule."

4 Now, Exhibit O was something that we had
5 looked at in this stack of papers, and it consists of
6 dates beginning June 5, 1995, so that would have been
7 approximately one year before you became general
8 manager, or maybe a little bit more than a year. It
9 pertains to one program, that being City Visions.
10 Correct?

11 A Yes.

12 Q Your understanding at the time you signed
13 this declaration was that this Exhibit O was all that
14 the FCC rules required in terms of quarterly lists for
15 purposes of the renewal application Question III(2)?

16 A Yeah, with some explanation. The concepts I
17 was dealing with were we needed to show in the public
18 file a sense that we were covering issues that were of
19 importance to the community, so I asked the producers
20 to create the list to put into the file to make it
21 complete. As I look at this exhibit, I don't think
22 that I would have believed that the file was complete
23 based on this list here, because it starts with 1995.

24 Q As opposed to going back to 1991, when the
25 license term started?

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1 A Correct.

2 Q So that's one problem with this list.

3 A Correct.

4 Q A second problem would be that it covers a
5 two year plus period and it was prepared all at once,
6 as opposed to prepared quarterly and broken out. Do
7 you know what I'm talking about there?

8 A Yeah, I think I know what you're talking
9 about.

10 Q The rule refers to a list being prepared
11 quarterly, every three months, so obviously, this list
12 didn't meet that requirement.

13 A Yeah, but when I got to the station the file
14 didn't include this information. I needed to correct
15 the fact that it wasn't there to make the file
16 complete by creating a list. I think I understand
17 what you're saying, that it's not organized by
18 quarter.

19 Q That's just one thing that sort of jumps
20 out.

21 A Yeah, because it was generated all at one
22 time, and I see that that's wrong now.

23 Q When paragraph 12 was put together and you
24 were stating that your understanding was that Exhibit
25 O was sufficient because of the various things that

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1 are mentioned here, did you have a conversation with
2 anybody where it was pointed out to you that that just
3 couldn't possibly satisfy the FCC's rules?

4 A I don't remember having any kind of
5 conversation.

6 (The document referred to was
7 marked for identification as
8 Ramirez Exhibit No. 9.)

9 BY MR. SHOOK:

10 Q Now, I want to show you another declaration.
11 This is not one that you did. This is one from Mr.
12 Helgeson. The two paragraphs that I want you to focus
13 are on paragraphs 3 and 4. If you could just read
14 those to yourself, and then I'll ask you a question or
15 two about them. First of all, with respect to
16 paragraph 3, did Mr. Helgeson have responsibility for
17 maintaining that four drawer file cabinet?

18 A Yeah, Bill had responsibility for the
19 cabinet because it was in his area. I don't know who
20 else was responsible for the filing cabinet.

21 Q So it's conceivable that somebody in
22 addition to Mr. Helgeson had responsibility for the
23 contents of the cabinet?

24 A Is it conceivable? No, it's not
25 conceivable. It was Bill's filing. See, I call it

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1 -- it was Bill's filing cabinet by virtue of the fact
2 that it was the one next to his desk.

3 Q But you didn't take it upon yourself to have
4 any responsibility for that file cabinet? In your
5 mind, that wasn't your job to take care of that file
6 cabinet?

7 A Correct.

8 Q Had you specifically assigned him the
9 responsibility for taking care of that, or was it
10 something that happened essentially by default, that
11 because the file cabinet was next to his desk, that's
12 his responsibility?

13 A It was the latter, by default. I didn't
14 assign Bill the responsibility for maintaining the
15 filing cabinet. That's the way it was when I got to
16 the station.

17 Q Moving on to paragraph 4, the one sentence
18 paragraph. He states that he's aware of and has
19 assisted with an ongoing affirmative effort since the
20 arrival of Jeffrey Ramirez as general manager to
21 update and maintain the station's public inspection
22 file. Is that an accurate statement, an ongoing
23 effort since your arrival?

24 A I can't say that it's accurate, because I
25 didn't understand the responsibility of maintaining

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1 the public file or what had to be in there from later
2 on.

3 Q From what you've told us, you really didn't
4 know that there was anything that had to be done
5 relative to the public file until essentially the
6 renewal application material showed up, and one of the
7 questions was have the documents been placed in the
8 public file that were supposed to be placed there at
9 the appropriate times. As I understood your
10 testimony, it was at that point that you understood
11 that there (a) was a public file and (b) there was
12 something that you had to do about it.

13 A Yeah, that's correct. In my approach to
14 working at the station, it was one big project at a
15 time. The first big project, get the station moved,
16 get it settled. The next project I don't think was
17 the license renewal. The next project was working
18 with the -- I can remember working with the principal
19 of the high school to find out some way or to -- I
20 didn't always have the impression that she welcomed
21 the fact that the station was put into her high
22 school, so I had to work out the working arrangements
23 between who parked where out in the parking lot,
24 because we shared the parking lot.

25 Things like -- the school bell was located

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1 right outside in the hallway, and, gosh darn it, the
2 school bell happens to go off at the top of the school
3 bell when the mike's open. Then there were the other
4 priorities of we had to make changes and undertake
5 work activities to make sure that we were meeting the
6 minimum criteria to continue to receive federal
7 funding. Those really were the things that were on my
8 mind and consuming most of my time.

9 You know, it sounds like I was really put in
10 the position of not managing strategically but really
11 managing by response or managing by reacting to
12 whatever fire truck I had to be on that day.

13 Q I think we call it crisis management. It's
14 something that we do in our lives all the time, I'm
15 afraid. Did you ever have any conversation with Mr.
16 Helgeson in terms of what responsibilities, if any, he
17 had in terms of the public file?

18 A I can't remember anything.

19 Q Do you have any knowledge as to who drafted
20 Mr. Helgeson's declaration?

21 A No. I don't know. I can only assume -- it
22 looks like it's in the same format as mine, so it
23 would have been the same -- so I imagine it would have
24 been done in the same manner.

25 Q Basically, you don't know, and it's

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1 perfectly acceptable to say you don't know.

2 A Okay. Yeah, I don't know.

3 Q I think you've indicated that it was shortly
4 after these declarations that you left the employ of
5 San Francisco Unified School District?

6 A Correct, in January 1998.

7 Q So I guess it would have been within days of
8 signing your declaration, since your declaration, I
9 think, was signed January 17. If you look at page 6,
10 it will show you when you executed it.

11 A I'll accept that.

12 Q So your leaving would have been almost
13 within days after signing this?

14 A Yeah. I remember my last day was
15 January 30.

16 Q Since leaving the employ of the San
17 Francisco Unified School District, have you spoken to
18 anyone about the KALW public inspection file?

19 A In working backward in time, in July of this
20 year, Ernie gave me a courtesy call to let me know
21 that the FCC notice of hearing had been released.
22 Prior to that time, I don't remember having any
23 conversations.

24 Q Since leaving the employ of the San
25 Francisco Unified School District, have you spoken to

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1 anyone about the issues programs lists for KALW?

2 A No.

3 Q Since leaving the employ of the San
4 Francisco Unified School District, have you spoken to
5 anyone about ownership reports or supplemental
6 ownership reports for the San Francisco Unified School
7 District?

8 A No.

9 Q I think I've already asked this, but in case
10 I haven't, since leaving the employ of the San
11 Francisco Unified School District, have you spoken to
12 anyone about the certification to the renewal
13 application?

14 A No.

15 (The document referred to was
16 marked for identification as
17 Ramirez Exhibit No. 10.)

18 BY MR. SHOOK:

19 Q The next document I'm going to show you is a
20 letter that was sent by the staff of the FCC back in
21 February 2001.

22 A Should I read it?

23 Q Just to yourself. You can skip it, because
24 if it's something that you haven't seen before, that
25 should be fairly apparent.

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1 A Yeah, I haven't seen this before.

2 Q Were you aware that the Commission staff had
3 sent such a letter to the San Francisco Unified School
4 District?

5 A No.

6 Q Was there a time before you were alerted to
7 the fact that we may have this hearing that the
8 Commission had any concerns about the school
9 district's renewal application certification, vis-a-
10 vis the condition of the KALW public inspection file?

11 A From the day I left the station to July?
12 No.

13 Q Now, in response to the FCC's letter, this
14 is what the school district sent. So what I have here
15 is not just the letter itself, but with all the
16 attachments.

17 A Do I just scan this?

18 Q Right. You can just scan the body of the
19 letter, as opposed to all of the attachments. We can
20 talk about the attachments in a bit, some of them, not
21 all of them. First of all, have you ever seen this
22 letter before, the letter that was sent by the school
23 district to the FCC staff?

24 A No.

25 Q Now, focusing your attention on page 3, page

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1 3 is talking about ownership and supplemental reports.
2 If you would, please, just read that to yourself.
3 Read the question and then read the response. Now,
4 first of all, in reading the question and the
5 response, do you know what ownership reports or
6 supplemental ownership reports are being referred to
7 here?

8 A Yeah, I do know now.

9 Q What is it that you know now?

10 A I want to make sure I follow up your first
11 question right. So what I know now is that this in
12 incorrect statement, because it was after we filed the
13 application, the license renewal that we understood --
14 or that I understood -- that there were supplemental
15 reports that needed to be in the file that conveyed a
16 change in the ownership.

17 Q So you remember preparing something about
18 the time the petition to deny came in relative to
19 supplemental ownership reports for certain years?

20 A It was certainly after we filed the renewal
21 application. I don't have a precise bearing on where
22 it fit in with the petition.

23 Q But what you do remember is preparing
24 supplemental ownership reports that to your
25 understanding should have been prepared earlier and

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